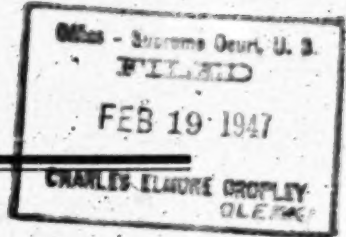


No.

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SUPREME COURT, U.S.



IN THE
Supreme Court of the United States

OCTOBER TERM 1946. 7.

~~No. 643~~ 11

FORD MOTOR COMPANY, *Appellant*,

v.

THE UNITED STATES OF AMERICA.

~~No. 644~~

COMMERCIAL INVESTMENT TRUST CORPORATION ET AL.,
Appellants,

v.

THE UNITED STATES OF AMERICA.

Appeals from the District Court of the United States for the
Northern District of Indiana.

**MOTION FOR LEAVE TO FILE A BRIEF
AMICUS CURIAE.**

RUSSELL HARDY,
Attorney for
Associates Investment Company et al.

IN THE
Supreme Court of the United States

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**MOTION FOR LEAVE TO FILE A BRIEF
AMICUS CURIAE.**

Associates Investment Company, American Security
Division of A. S. C. Corporation, and A. & A. Credit
System, Inc., move the Court for leave to file a brief
amicus curiae; and for cause show:

They and approximately 372 so-called independent automobile finance companies, are engaged in the business of financing the purchase and sale of Ford automobiles, wholesale and retail, throughout the United States. They and approximately 330 automobile finance companies are members of a trade association called American Finance Conference. They have permission from that association to make this motion in its behalf.

The appellants (who will be referred to as Ford and CIT), have refused to consent to the filing of a brief *amicus curiae*. The Solicitor General has consented for the appellee.

The proponents of this motion are the "independent finance companies" referred to in the complaint, and they are one of the important groups who are the directly injured victims of the refusals, preferences, discriminations and restraints practiced by the appellants. (R. 1, 6, 8-11) The other group is composed of the approximately 11,000 Ford dealers referred to in the complaint. (R. 4)

The independent finance companies are given a formal status in the decree by a provision permitting "any aggrieved finance company" to object to a plan by the appellants for financing the purchase of automobiles, which may constitute an unreasonable restraint of trade. (R. 30)

On November 15, 1938, a consent decree was entered against appellants, which, amongst other things, prohibited an affiliation between them by an acquisition of control over or interest in CIT, prohibited Ford from recommending, endorsing or advertising to dealers that they patronize CIT, and prohibited joint solicitation of dealers by Ford and CIT. (R. 23, 30)

In this appeal, the appellants seek to end these restrictions; obviously for the purpose of making the affiliation and engaging in the practices prohibited. That purpose, if effected, will constitute an unlawful restraint of trade which will be greatly injurious to the independent finance companies.

The decree provides that if the Government shall not in another suit procure a separation of General Motors Corporation and General Motors Acceptance Corporation, as well as a prohibition of similar practices, the prohibitions against the appellants shall be ended.

The position of the Government and the appellants, in the District Court, was that the decree was an agreement between them that an affiliation between Ford and CIT should be permitted, and that the appellants should be permitted to recommend, endorse and advertise the use by Ford dealers of CIT, and to jointly solicit the dealers for that purpose; even though the affiliation and practices should be productive of restraint of trade; UNLESS in a criminal case then pending against General Motors similar practices should be condemned by the verdict of the jury, and UNLESS in another suit to be brought against General Motors a similar affiliation and similar practices should be enjoined. As to the practices, the contention of the Attorney General was that the agreement had been performed, because the verdict had condemned the practices. As to the affiliation, the contention was that for certain reasons he had been unable to procure the de-affiliation of General Motors and should be given more time to do so.

Accordingly, we believe that the questions which will be presented to this Court by the principal parties will be (1) whether the verdict of a jury condemned the practices as illegal, and (2) whether the Attorney General has a good excuse for delay in procuring a divorcement of General Motors. We believe these questions are superficial, and ignore more important fundamental questions.

The proper and fundamental questions are (1) whether the agreement to tie this case and the General Motors case together, was an agreement not to molest one offender if another should not be promptly and successfully prosecuted; (2) whether that agreement is contrary to public policy; and (3) whether the creation of a community of interest between Ford and CIT in the automobile finance

business, plus the recommending, endorsing and advertising by appellants that Ford dealers should patronize CIT, and the Ford-CIT joint solicitation of the dealers for that purpose, may or will constitute a restraint of trade.

In the District Court we asked and were refused the right to formally intervene, but were given the right to file a brief amicus and to make an argument. We believe that the brief and argument were helpful to the Court, and presented a pertinent and important view not stated by the principal parties.

The proponents of this motion, therefore pray for leave to file a brief to argue (1) that the agreement to relieve the appellants of the restrictions of the decree until action shall be taken against General Motors, is contrary to public policy and should not be enforced by the courts, and (2) that even if there were only a probability that the proposed affiliation and practices would constitute a restraint of trade, the restrictions should not be ended.

Respectfully submitted,

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RUSSELL HARDY,
Attorney for
Associates Investment Company et al.